



**THE ATTORNEY GENERAL
OF TEXAS**

August 30, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Jesusa Sanchez-Vera
Jim Wells County Attorney
P. O. Drawer 2080
Alice, Texas 78333

LO-89-68

Dear Mr. Sanchez-Vera:

You ask whether a county must comply with the competitive bidding statute to purchase used machinery or equipment.

Section 262.023(a) of the Local Government Code provides:

Before a county may purchase one or more items under a contract that will require an expenditure exceeding \$5,000, the commissioners court of the county must comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter. All bids or proposals must be sealed.

Section 262.024 of the Local Government Code provides for exceptions to the bidding requirements of section 262.023 for certain designated items. There is not a general exception for used machinery or equipment. However, it is possible that an item of used machinery or equipment may come within one of the bidding requirement exceptions listed in subsection (7) of section 262.024. Subsection (7) provides for exemption to the bidding requirement for

an item that can be obtained from only one source, including:

(A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or natural monopolies;

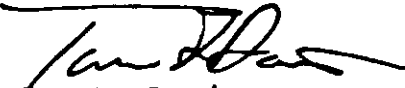
. . . .

(D) captive replacement parts or components for equipment.

Honorable Jesusa Sanchez-Vera
August 30, 1989
Page 2

The purchase of used machinery or equipment is subject to the competitive bid requirements of section 262.023 if the item requires an expenditure exceeding \$5,000. Whether an item of used machinery or equipment comes within one of the exemptions to the bidding requirement set forth in section 262.024 is a factual question that must be resolved on a case-by-case basis. See Attorney General Opinion JM-974 (1988). The resolution of such issue is not within the province of the opinion process of this office.

Very truly yours,



Tom G. Davis
Assistant Attorney General
Opinion Committee

APPROVED: Rick Gilpin
Chairman
Opinion Committee

Ref.: RQ-1772
ID# 7027